

**COUNTY OF VENTURA  
ENVIRONMENTAL HEALTH DIVISION  
LOCAL ENFORCEMENT AGENCY**

INDEX OF DOCUMENTS FOR  
THE COMPLETE ADMINISTRATIVE RECORD  
OF THE ADMINISTRATIVE HEARING  
FOR APPEAL OF  
THE LOCAL ENFORCEMENT AGENCY (LEA)  
CEASE AND DESIST ORDER  
ISSUED TO WAYNE FISHBACK ON MAY 11, 2006



**DOCUMENTS:**

1. Appellant's May 26, 2006 request for hearing to appeal Cease and Desist Order
2. LEA's June 6, 2006 Response to Appeal filed by appellant
3. Appellant's July 18, 2006 Hearing Brief and Exhibits
4. LEA's August 29, 2006 Reply Brief to the July 18, 2006 Appellant's Brief
5. LEA Exhibits submitted to the Hearing Officer at the July 20, 2006 appeal hearing
6. Compilation of closing briefs:
  - a. Appellant's Closing Brief, September 18, 2006
  - b. LEA's Final Closing Brief, September 18, 2006
  - c. Hearing Officer NOTICE OF DECISION, September 22, 2006
7. Hearing Transcripts:
  - a. June 21, 2006 Hearing
  - b. July 20, 2006 Hearing
  - c. August 31, 2006 Hearing

**APPEAL FROM CEASE AND DESIST ORDER OF THE VENTURA COUNTY  
LOCAL ENFORCEMENT AGENCY ("LEA")**

*In the matter of Wayne Fishback, regarding "Operation of a solid waste facility without a permit in the unincorporated area of Ventura County generally referred to as the North American Cutoff Road"*

PLEASE TAKE NOTICE THAT Wayne Fishback hereby appeals from the Cease and Desist Order issued on May 11, 2006 on all legally permissible grounds, including but not limited to the following:

- 1) The Fishback grading operation are legally-conducted agricultural slope stabilization and erosion control activities, and is not subject to the regulations cited by the LEA
- 2) The Fishback grading operation is subject to the Ventura County Hillside Erosion Control Ordinance ("HECO"), as monitored and governed by the Ventura County Resource Conservation District ("RCD"). Prior to the RCD application, Fishback was informed by RCD that the slope stabilization and erosion control activities were exempt from regulation as less than 10% of the total ranch was being worked. The RCD has been working with Fishback to complete a HECO plan, which plan is exempt from the regulations cited by the LEA.
- 3) The clean fill utilized in the Fishback grading operation is not subject to the regulations cited by the LEA, and are protected by case law, Public Resources Code §§40000 *et seq.*, Title 14 of the California Code of Regulations, Division 7, and Ventura County Ordinance 4308.
- 4) Similar grading operations in the County have not been targeted for investigation or permitting by the LEA; Fishback is being singled out for disparate treatment.

More detailed objections to the actions taken by the LEA have been included in letters to William Stratton, Diane Hall and others at the County. Those letters are attached and incorporated herein by reference.

All communications concerning this appeal must be directed to Kate Neiswender, as attorney for Wayne Fishback, at PO Box 24617, Ventura CA 93002 (805-649-5575).

Dated: May 26, 2006



Kate M. Neiswender, Attorney for  
Appellant Wayne Fishback

April 28, 2006

Diane Hall, REHS Inspector  
Environmental Health Department  
Ventura County  
800 S. Victoria Ave.  
Ventura, CA, 93009

This confirms a telephone conversation between Diane Hall and Wayne Fishback on 4-26-06. The following should be noted.

1. Fishback queried why the letter dated 4-4-06 from Bill Stratton determined Fishback's activities and property to be a Title 14 CCR, Article 5.95, Section 17388.3 Type A Disposal Facility (Registration Tier requiring public hearing and CEQA review).
2. Ms. Hall responded that the County did not have sufficient information to classify it as anything else such as an Excluded Tier Inert Debris Engineered Fill Activity or a Notification Tier Inert Debris Engineered Fill Operation. The lack of engineering information was given as the specific issue.

I cannot understand this response for a variety of reasons. First putting aside the disagreement over whether my activities are a regulated disposal site versus an unregulated construction site, the three areas inspected should not exceed an Excluded activity as described above. I have provided the dates of construction activity which the County considers disposal activity. Area three was active prior to 2-24-04 (effective date of regs) and the other two are below the one year threshold for the Notification Tier. As an excluded activity engineering documentation is not required. However since my activities have been engineered for other reasons I have requested my lawyer to provide this information to you along with the qualifications of the professionals providing services on my project.

The one piece of documentation I am still working on is a letter of exemption for WDR's from the Los Angeles Regional Water Quality Control Board. This effort has been ongoing since early December which included a trip to Sacramento. I am enclosing two memos for background. You will note from these memos that I am the first in the LARWQCB region to request a WDR or letter of exemption. In fact people in Sacramento believe I am the first in the State. For my activities Jeff Barnickol and Joe Mellow believe the letter of exemption should be provided pursuant to Title 27 CCR Section 20090(h). To date none of the owners you have identified as operating a disposal site has provided a WDR or letter of exemption including Muranaka Farms, Ed Jefferson, Tom Crocker or Bill Miller. Also none of these landowners have been required to provide any engineering

information. These sites have been classified as either an excluded tier or notification tier which have far less requirements than a registration tier.

I believe it is clear I have been singled out for disparate treatment. I have carefully analyzed all of the sites the County claims are regulated under Title 14 CCR, Article 5.95 Section 17387 et seq. and several unregulated Recycle/Salvage operations. I believe that some of these operations, that are directly adjacent or in the Arroyo, Simi and Arroyo Los Posas, are causing major pollution in violation of the Federal Clean Water Act, California Porter Cologne Water Quality Control Act and flood plain impairment in violation of the Cobey-Alquist Flood Plain Management Act.

Muranaka Farms- Regulated

Cemex or Pre Con Inert Debris Salvage- Unregulated

Simi Valley Recycling Center- Unregulated

In contrast my activities are far removed from any water body; the work is designed to stabilize slopes, prevent erosion and minimize sediment runoff; inert materials are used that are diverted out of the wastestream and landfills; the work is accomplished in the most energy efficient way possible; all of which is beneficial to the environment and supports CIWMB and ERD's number one priority of waste reduction. Yet the County seems determined to characterize the protection of my property as an activity requiring far more stringent regulatory oversight than required by law or comparable enforcement. To make this comparison I am enclosing several photos of my property and other sites in the County. Again I cannot understand why EHD has singled me out for punitive action when there is such catastrophic pollution going on in the Colleguas Watershed much of which is directly under EHD supervision or perfectly obvious given signs that identify dumpsites to the public.

Regards,

Wayne

Enclosure

Photographs

Engineering Reports

Consultant Qualifications

May 4, 2006

William Stratton  
Technical Services Section  
Environmental Health Division  
800 So. Victoria Ave.  
Ventura, California 93009

Dear Bill,

I was encouraged by our discussion on 5-2-06 as it related to my past and current use of inert materials. First a couple of clarifications. There appeared to be some confusion over materials being imported as a result of swimming pool demolition. Prior to 5-1-06 the vast majority of material was dirt from newly excavated pools along with a small percentage of concrete from pool demolition and replacement. After 5-1-06 only dirt and other natural materials are being received from new excavations.

I would also like to clarify our proposed use of concrete, asphalt and other clean inert materials pursuant to my lawyer's letter on 4-17-06. The material referenced in her letter should have been classified under 14 CCR Section 17388.2(2) which provides for the stockpiling and recycling of these materials for construction purposes e.g. road base etc. I believe we have the right to do this within the two year restriction but I have halted the importation of this material pursuant to your letter, first paragraph and dated 04-27-06. With this clarification, if you agree that I have a right to import concrete, etc. for recycled road base please let me know at your earliest convenience. Parenthetically producing my own road base on site costs \$4.00 per ton versus \$15.00 a ton for delivered crushed rock. It is my understanding from CIWMB that 14 CCR Section 17388.2(2) was included as a particular engineered fill activity in order to control the storage period. If the storage period exceeds two years the site becomes a disposal site. The attached photos of Highway 101 in Oxnard and the Interstate 10 and 405 intersection are examples of 14 CCR 17388.2(2).

Based on our discussion I would like the following to be considered. As an attachment you will find some charts that attempt to organize the numerous definitions and descriptions of materials, activities, etc. pursuant to PRC 40000 et seq. and 14 CCR Articles 5.9, 5.95, and 6.0. Also a flow diagram of solid waste and recycled/reusable materials as they move through the "wastestream" or are diverted into the "economic mainstream". The codes, regulations and ordinances are not clear about the point at which solid waste changes into "feedstock" or beneficial use materials when salvaged or recycled. In fact V.C. Ordinance 4308, Section 4741-25 defines both Recyclables (solid waste prior to recycling) and Recycled Materials (after recycling) "means all solid waste that is identified for Diversion...". This gives the impression and supports your premise, as I understand it, that recycled material is solid waste. It is not until you read the

definition of diversion that I believe makes the point that materials, once recycled or salvaged for reuse, cease being solid waste. Per V.C. Ordinance Section 4741-13 "Diversion" means activities that reduce or eliminate the amount of solid waste from solid waste disposal and which return these materials to the economic mainstream...". Based on these and other definitions I constructed the flow chart that illustrates the process of various materials e.g. solid waste, debris for processing, recyclable material and salvaged material moving through the "wastestream" and/or the "economic mainstream". For easy reference I also put together a synopsis of applicable Codes, Regulations and V.C. Ordinances which is attached. Finally in making the point please consider your business card that makes the statement "100% recycled paper". I assume the business card having been recycled and having beneficial use would not still be considered solid waste.

The other problem we seem to be dealing with is understanding the materials and their use that are regulated or under other conditions are unregulated. In particular 14 CCR organizes materials, facilities and activities into a hierarchy of regulated Tiers and other materials and activities that are unregulated. The hierarchy is organized by the most regulated materials etc. to the least regulated. See attached chart.

One of the problems that the attached charts attempt to clarify is that the same materials occur in multiple levels of regulation including no regulation. For example broken concrete and fully cured asphalt are specifically called out in the following definitions or Tier descriptions:

- C&D Debris 17381(e)(1)(A)
- Inert Debris Type A 17381(k)(1)
- Inert Debris Engineered Fill Operation 17381(l)
- Inert Debris Type A 17388(k)(1)
- Inert Debris Engineered Fill Operation 17388(l)
- Inert Debris Engineered Fill Activity 17388(2)(2)
- Fill 17388(h)

Concrete and Asphalt are assumed to be in these definitions or tier descriptions by cross reference to the above definitions

- CDI Debris 17381(c) Reference 17381(k)(1)
- CDI Waste 17388(c) No Materials called out?
- CDI Waste 17388(b) Reference 17388(k)(1)
- Inert Debris Engineered Fill Activity 17388.2(3) Reference 17388(k)(1)
- Engineered Fill Activity 17388(g) Reference 17388(h)
- Grading 17388(j) Reference 17988(h)

Given these classifications of concrete and asphalt, it seems obvious to me that concrete under "Fill" is not regulated in the same way as concrete under "CDI Waste". As I understand the Regs "Fill" is unregulated while "CDI" disposal

requires a full permit. Other classifications include Excluded, Notification and Registration Tiers.

We also discussed the issues of the one year time limitation on "Inert Debris" 14 CCR Section 17388.2(3) and what constitutes a project that is subject to the one year time limitation. It appears to me that the definition of an Engineered Fill Activity provides guidance. This definition describes this as a "specific project" under 14 CCR Section 17388(g) which would infer multiple one year "specific projects" (self contained projects) would be allowed. The regulations presumably do not intend to limit a property owner to a single lifetime "specific project". However each "specific project" would be limited to one year. Additionally if we assume that such projects are administered by V.C. Resource Conservation District or V.C. Public Works Development and Inspection Services there is good oversight. Further if a person limits the materials to concrete and asphalt "Fill" pursuant to 17388(h) and follows 17388(g) and 17388(j) the one year limitation should not apply. Keep in mind however that even this is regulated in so far as a person is required to have engineered specifications and oversight if it is a disposal activity.

Finally while I don't want to "nitpick" your 4-27-06 letter there are two positions I want to comment on. In your fourth paragraph you appear to imply that only a person who generates C&D debris has a right to import inert materials for construction purposes. It is counter intuitive to set up a pre requisite that solid waste must first be produce to gain the right to import and reuse salvaged inert materials. It is far more logical to infer that if a person who generates C&D debris can import additional debris certainly a person who does not generate waste has the same right.

A second concern is your fifth paragraph that properly concludes that my activities are not a transfer or operating facility but then leaps to the conclusion that I am operating a disposal site. This simply ignores all of the things that are unregulated under Articles 5.9 and 6.0. Hopefully the attached Chart and Flow Diagram will illustrate why I never get to Article 5.95 Disposal Regulations.

Can we meet to further discuss?

Regards,

Wayne Fishback

May 18, 2006

William Stratton  
Technical Services Section  
Environmental Health Division  
800 South Victoria Avenue  
Ventura, California 93009

RE: William Stratton's punitive actions against Wayne Fishback and his activities related to protection of property.

Mr. Stratton:

I was deeply disappointed by your various actions enumerated below during the week of 5-9-06. You chose to ignore the regulations you purport to enforce, disregard voluminous evidence of my activities, discredited the work of highly qualified professionals and subvert the goals of the California Integrated Waste Management Board (CIWMB).

5-9-06 Telephone Conversation

I placed this call to you in order to get your response to my correspondence to you on 5-4-06 and correspondence to Diane Hall on 4-28-06. At this point there is no purpose in arguing my position but I do want to make note of your comments regarding engineering information provided to you. You indicated this information was of no value as it did not provide any of the engineering required for an Inert Debris Engineered Fill Activity (IDEFA) or an Inert Debris Engineered Fill Operation (IDEFO). I was dumbfounded at your comment. You admonished me that as an architect I should know this. You continued by explaining there were no compaction reports, no soil boring analysis and certain regulatory terms such as engineered fill "geometry" were missing and the engineers description of work was prospective and not directed to the work in place. I reminded you I was not required to provide you or the Environmental Health Department (EHD) any engineering information but was doing so to cooperate and eliminate any concerns regarding health and safety issues. The information provided you and your response is an outrage when compared to other Inert Debris Engineered Fill Activities or Operations. The only similar information to be found in the public records are these comments by a contractor for the Farm Restoration Project SWIS # 56-AA-0144. The Operation Plan States "The method of dumping, spreading, compacting and leveling to final grade is done in accordance with Best Management Practices and complies with State Minimum Standards." "The compaction standards for relative density do not apply for areas used to support farming activities. The method of placement of solid waste such as concrete is done with heavy equipment and pushed into the fill so that pieces are chocked with dirt and nesting of materials is controlled. Compaction is performed by equipment placing the inert materials to control settlement and subsidence." To my knowledge this project has had no engineering oversight. It is absurd for you



Mr. Stratton, with no engineering qualifications to criticize the engineering oversight I have provided for my project. You also mentioned there was no engineered plan. I have attached the plan for my property and the plan on file with EHD for the Farm Restoration Project. You will note the latter outlines nothing more than the fill area on the representative Thomas Guide page. I ended our conversation by stating once again that the areas of salvaged inert materials used on my property were there to address landslide and debris flows during the '04-'05 record rains. (Ventura County was declared a federal disaster area), to control erosion and sediment runoff particularly after the 05 wildfire and with construction work being done to local, state and federal recommendations (see four enclosures) and with the oversight of civil engineers, geotechnical engineers, environmental specialists, legal analysis and my own architectural background. Even assuming my activities require EHD/LEA oversight the appropriate level would be an excluded activity for the use of inert materials other than natural materials e.g. dirt, rock, sand, gravel. Since all of my specific projects taken together do not exceed the one year time restriction. By classifying my activities into a Registration Tier Permit requirement you have effectively denied me the appropriate "permit". Further your actions against me are punitive and totally disparate from that accorded to Burhoe/Muranaka Farms, Ed Jefferson, Bill Miller and Tom Crocker. As I explained to you the engineering work, government oversight by multiple agencies at the Federal, State and Local level and information provided to you far exceed the requirements you placed on the other projects just referenced.

5-10-06 Ventura County Resource Conservation District Meeting (VCRCD)

I attended this VCRCD Board of Director's meeting to answer any questions regarding my application for a cooperative agreement with the VCRCD for a Hillside Erosion Control Plan. You attended this meeting to inform the Board that EHD had jurisdiction over my grading activities that involved inert materials with or without VCRCD approval. Your comments led to an hour long debate as to whether my application should be approved. Ultimately the Board followed Dale Dean's recommendation to approve my application with the entire Board voting to approve except for one vote to deny. The approval of my application appeared to be your only interest in the meeting as you abruptly left after the vote took place. I believe your actions at this meeting are unprecedented whereby one agency tries to influence another agency against a private citizen who's trying to do the right thing.

5-11-06 Meeting of Various Ventura County Agencies

A meeting was held to review material that I had provided to Ray Gutierrez on 3-24-06. (See attached memo for background) Agencies in attendance were Development and Inspection Services, Watershed Protection District and Resource Management Agency including Melinda Talent, Todd Collard and Gloria Goldman. The photographic material and topographic plans document an environmental disaster and actions by property owners, under EHD's supervision, that are enormously financially damaging to the public. Unlike

RMA's vindictive attack on me RMA primarily expressed concerns about the time frames of photographs, whether trespassing had taken place to take photos and whether the photographed activities were done under permit. As I understand it RMA seemed more interested in squelching an investigation than actively supporting it. This appears consistent with the fact that Melinda Talent, Supervisor of EHD's Solid Waste Department, became aware of this information on 3-24-06 while at the same time dumping directly into the Arroyo Las Posas under EHD's supervision continues unabated to this day. EHD was also shown many other dumpsites along and into the Arroyo Las Posas that continue to this day.

5-12-06 Receipt of Cease and Desist Order

Under your signature you issued to me a cease work order of my construction activities that were taking place to protect my property and the waters of the State. On 5-2-06 I warned you of the consequences of such an action. You and the County have ignored this warning. In addition to financial damages you will be responsible for impeding the completion of my erosion control and slope stabilization measures that may lead to substantial sediment runoff during the next wet season. Pollution runoff will not be my responsibility for refusing to comply with your erroneous and malicious order to apply for a solid waste disposal facility permit. Finally throughout this ordeal you have steadfastly refused to acknowledge a priority of the CIWMB which is to reuse materials that would otherwise become solid waste. Further you simply ignore the regulations and voluminous CIWMB supporting documentation on its website that describes the beneficial use of inert materials that do not require permitting as follows:

Insert CIWMB info

Regards,

Wayne